

## 1999 ASSEMBLY BILL 614

December 1, 1999 – Introduced by Representatives PETTIS, KESTELL, JENSEN, COGGS, UNDERHEIM, KLUSMAN, SYKORA, ALBERS, OLSEN, NASS, WARD, HANDRICK, VRAKAS, STASKUNAS, KREIBICH, WALKER, MUSSER, KAUFERT and BOCK, cosponsored by Senators GEORGE, ROSENZWEIG, PANZER, BRESKE and GROBSCHMIDT. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT** *to repeal* 943.207 (3); *to renumber and amend* 943.207 (2); *to amend*  
2           943.207 (title), 943.207 (1) and 973.075 (5) (intro.); and *to create* 943.206,  
3           943.207 (1) (c), 943.207 (3m), 943.208, 943.209, 943.49, 973.075 (1) (e) and  
4           973.075 (5m) of the statutes; **relating to:** unauthorized duplication of a  
5           recording, unauthorized recording of a performance, failure to disclose  
6           manufacturer of a recording, unauthorized use of a recording device in a movie  
7           theater and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a person may not knowingly and wilfully transfer recorded sounds without the consent of the owner with intent to sell the record, disc, wire, tape, film or other article onto which the sounds are transferred (an “unlawful transfer”). (“Owner” is defined under current law to mean the person who owns the sounds embodied in the original master recording from which the transferred sounds are directly or indirectly derived.) In addition, a person may not advertise, offer for sale or sell the article onto which such sounds have been transferred (a “pirated recording”) with knowledge that the sounds were transferred onto the article without the consent of the owner. A first-time violator of the unlawful transfer prohibition may be fined not more than \$1,000 or imprisoned for not more than 90 days or both. For each subsequent unlawful transfer offense, the person may be fined not more

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than \$10,000 or imprisoned for not more than nine months or both. A person who knowingly advertises, offers for sale or sells a pirated recording may be fined not more than \$1,000 or imprisoned for not more than 90 days or both for each unlawful advertisement, offer or sale.

This bill amends these provisions to prohibit a person from knowingly transporting, offering to rent, renting or possessing pirated recordings. It also limits the prohibitions on unlawful transfers and on transporting pirated recordings to cases in which the person transferred the sounds or transported the pirated recordings for commercial advantage or private financial gain. The penalties for violations are also revised. Under the bill, a violation is generally classified based on the number of recordings involved or, in the case of a pirated recording distributed on the Internet, the number of times the recording was replayed by another person during a 180-day period:

<i>Number of recordings/replays involved during a 180-day period</i>	<i>Classification</i>
Under 100	Class A misdemeanor
100–999	Class D felony
1000 or more	Class C felony

The bill also creates three new crimes. The first relates to “bootlegging”. Under the bill, no person may record a performance without the performer’s consent with intent to sell or rent the bootlegged recording. The bill also prohibits individuals who know that a recording has been bootlegged from advertising, offering to sell or rent, selling, renting or transporting the recording or from possessing it for one of those purposes. Violations are generally classified as follows:

<i>Number of recordings involved during a 180-day period</i>	<i>Classification</i>
Under 100 recordings embodying sound or under 10 audiovisual recordings	Class A misdemeanor
100–999 recordings embodying sound or 10–99 audiovisual recordings	Class D felony
1000 or more recordings embodying sound or 100 or more audiovisual recordings	Class C felony

The second new crime relates to counterfeit recordings. Under the bill, no person may knowingly advertise, offer for sale or rent, sell, rent or transport a recording or possess a recording for one of those purposes if the recording does not contain the name and address of the manufacturer of the recording in a prominent place on its cover, jacket or label. Violations are generally classified as follows:

<i>Number of recordings involved during a 180-day period</i>	<i>Classification</i>
Under 10	Class A misdemeanor
10–99	Class D felony
100 or more	Class C felony

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The provisions regarding the third new crime prohibit a person from using any type of recording device in a movie theater without the written authorization of the theater owner or his or her agent. A person who violates this prohibition is generally guilty of a Class A misdemeanor. The bill also prohibits a person from knowingly advertising, offering for sale or rent, renting or transporting unlawfully recorded movies or possessing a recording for one of those purposes. Penalties are generally classified as follows:

<i>Number of recordings/replays involved during a 180-day period</i>	<i>Classification</i>
Under 100	Class A misdemeanor
100–999	Class D felony
1000 or more	Class C felony

The penalty provisions applicable to the three new crimes and to the unlawful transfer/pirated recording prohibitions treat repeat offenders separately. Under the bill, a person who commits one of these offenses — other than the unlawful recording of a movie — after having been previously convicted of the same offense is guilty of a Class C felony, regardless of the number of recordings or replays involved. A person who violates the provisions regarding unauthorized recording of a movie after having previously been convicted of that offense is guilty of a Class D felony.

The bill also subjects recordings and devices used for recording or for manufacturing, reproducing, packaging or assembling recordings involved in a violation of any of these provisions to forfeiture.

Penalties for violations are as follows:

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum imprisonment (for offenses occurring before 12/31/99)</i>	<i>Maximum imprisonment (for offenses occurring on or after 12/31/99)</i>
Class C felony	\$10,000	10 years	15 years
Class D felony	\$10,000	5 years	10 years
Class A misdemeanor	\$10,000	9 months	9 months

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 943.206 of the statutes is created to read:
- 2           **943.206 Definitions.** In this section and ss. 943.207 to 943.209:
- 3           **(1)** “Manufacturer” means a person who transfers sounds to a recording.

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1           **(3)** “Performance” means a recital, rendering or playing of a series of words or  
2 other sounds, either alone or in combination with images or physical activity.

3           **(4)** “Performance owner” means the performer or performers or the person to  
4 whom the performer or performers have transferred, through a contract, the right  
5 to sell recordings of a performance.

6           **(5)** “Recording” means a medium on or in which sounds or images or both are  
7 stored.

8           **SECTION 2.** 943.207 (title) of the statutes is amended to read:

9           **943.207 (title) Transfer of recorded sounds for unlawful use; sale.**

10          **SECTION 3.** 943.207 (1) of the statutes is amended to read:

11          943.207 **(1)** Whoever does any of the following may be penalized as provided  
12 in sub. (3) (3m):

13          (a) ~~Knowingly and wilfully~~ Intentionally transfers or causes to be transferred,  
14 without the consent of the owner, any sounds recorded on a phonograph record, disc,  
15 wire, tape, film or other article on which sounds are recorded first embodied in or on  
16 a recording before February 15, 1972, with intent to sell or cause to be sold, the article  
17 or rent the recording into or onto which such sounds are transferred for commercial  
18 advantage or private financial gain.

19          (b) Advertises, offers for sale or rent, sells any article ~~onto which, rents or~~  
20 possesses a recording with knowledge that sounds have been transferred as  
21 described in into or onto it in violation of par. (a), ~~with the knowledge that the sounds~~  
22 ~~thereon have been so transferred without the consent of the owner.~~

23          **SECTION 4.** 943.207 (1) (c) of the statutes is created to read:

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1           943.207 (1) (c) Transports a recording within this state for commercial  
2 advantage or private financial gain with knowledge that sounds have been  
3 transferred into or onto the recording in violation of par. (a).

4           **SECTION 5.** 943.207 (2) of the statutes is renumbered 943.206 (2) and amended  
5 to read:

6           943.206 (2) ~~In this section “owner”~~ “Owner” means the person who owns the  
7 ~~original fixation of sounds embodied in the master phonograph record, master disc,~~  
8 ~~master tape, master film or other device used for reproducing recorded sounds on~~  
9 ~~phonograph records, discs, tapes, films or other articles on which sound is recorded,~~  
10 ~~and sounds in or on a recording~~ from which the transferred sounds are directly or  
11 indirectly derived.

12           **SECTION 6.** 943.207 (3) of the statutes is repealed.

13           **SECTION 7.** 943.207 (3m) of the statutes is created to read:

14           943.207 (3m) (a) Whoever violates this section is guilty of a Class A  
15 misdemeanor under any of the following circumstances:

16           1. If the person transfers sounds into or onto 100 or fewer recordings or creates,  
17 advertises, offers for sale or rent, sells, rents, possesses or transports 100 or fewer  
18 recordings in violation of sub. (1) during a 180-day period.

19           2. If the person transfers sounds on or to the Internet in violation of sub. (1) and  
20 the transferred sounds are never replayed or are replayed by others from the  
21 Internet 100 or fewer times during a 180-day period.

22           (b) Whoever violates this section is guilty of a Class D felony under any of the  
23 following circumstances:

24           1. If the person transfers sounds into or onto more than 100 but less than 1,000  
25 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports

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1 more than 100 but less than 1,000 recordings in violation of sub. (1) during a 180-day  
2 period.

3 2. If the person transfers sounds on or to the Internet in violation of sub. (1) and  
4 the transferred sounds are replayed by others from the Internet more than 100 but  
5 less than 1,000 times during a 180-day period.

6 (c) Whoever violates this section is guilty of a Class C felony under any of the  
7 following circumstances:

8 1. If the person transfers sounds into or onto at least 1,000 recordings or  
9 advertises, offers for sale or rent, sells, rents, possesses or transports at least 1,000  
10 recordings in violation of sub. (1) during a 180-day period.

11 2. If the person transfers sounds on or to the Internet in violation of sub. (1) and  
12 the transferred sounds are replayed by others from the Internet at least 1,000 times  
13 during a 180-day period.

14 3. If the violation occurs after the person has been convicted under this section.

15 **SECTION 8.** 943.208 of the statutes is created to read:

16 **943.208 Recording performance without consent of performance**  
17 **owner. (1)** Whoever does any of the following for commercial advantage or private  
18 financial gain may be penalized as provided in sub. (2):

19 (a) Creates a recording of a performance without consent of the performance  
20 owner and with intent to sell or rent the recording.

21 (b) Advertises, offers for sale or rent, sells, rents or transports a recording of  
22 a performance with knowledge that the sounds, images or both from the performance  
23 embodied in the recording were recorded without the consent of the performance  
24 owner.

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1 (c) Possesses with intent to advertise, offer for sale or rent, sell, rent or  
2 transport a recording of a performance with knowledge that the sounds, images or  
3 both from the performance embodied in the recording were recorded without the  
4 consent of the performance owner.

5 (2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person  
6 creates, advertises, offers for sale or rent, sells, rents, transports or possesses 100 or  
7 fewer recordings embodying sound or 10 or fewer audiovisual recordings in violation  
8 of sub. (1) during a 180-day period.

9 (b) Whoever violates sub. (1) is guilty of a Class D felony if the person creates,  
10 advertises, offers for sale or rent, sells, rents, transports or possesses more than 100  
11 but less than 1,000 recordings embodying sound or more than 10 but less than 100  
12 audiovisual recordings in violation of sub. (1) during a 180-day period.

13 (c) Whoever violates sub. (1) is guilty of a Class C felony if the person creates,  
14 advertises, offers for sale or rent, sells, rents, transports or possesses at least 1,000  
15 recordings embodying sound or at least 100 audiovisual recordings in violation of  
16 sub. (1) during a 180-day period or if the violation occurs after the person has been  
17 convicted under this section.

18 (3) Under this section, the number of recordings that a person rents shall be  
19 the sum of the number of times in which each individual recording is rented.

20 **SECTION 9.** 943.209 of the statutes is created to read:

21 **943.209 Failure to disclose manufacturer of recording.** (1) Whoever  
22 does any of the following for commercial advantage or private financial gain may be  
23 penalized as provided in sub. (2):

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1 (a) Knowingly advertises, offers for sale or rent, sells, rents or transports a  
2 recording that does not contain the name and address of the manufacturer in a  
3 prominent place on the cover, jacket or label of the recording.

4 (b) Possesses with intent to advertise, offer for sale or rent, sell, rent or  
5 transport a recording that does not contain the name and address of the  
6 manufacturer in a prominent place on the cover, jacket or label of the recording.

7 **(2)** (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person  
8 advertises, offers for sale or rent, sells, rents, transports or possesses 10 or fewer  
9 recordings in violation of sub. (1) during a 180-day period.

10 (b) Whoever violates sub. (1) is guilty of a Class D felony if the person  
11 advertises, offers for sale or rent, sells, rents, transports or possesses more than 10  
12 but less than 100 recordings in violation of sub. (1) during a 180-day period.

13 (c) Whoever violates sub. (1) is guilty of a Class C felony if the person advertises,  
14 offers for sale or rent, sells, rents, transports or possesses at least 100 recordings in  
15 violation of sub. (1) during a 180-day period or if the violation occurs after the person  
16 has been convicted under this section.

17 **(3)** Under this section, the number of recordings that a person rents shall be  
18 the sum of the number of times in which each individual recording is rented.

19 **SECTION 10.** 943.49 of the statutes is created to read:

20 **943.49 Unlawful use of recording device in motion picture theater. (1)**

21 DEFINITIONS. In this section:

22 (a) “Motion picture theater” means a site used for the exhibition of a motion  
23 picture to the public.

24 (b) “Recording” has the meaning given in s. 943.206 (5).

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1 (c) “Recording device” means a camera, an audio or video recorder or any other  
2 device that may be used to record or transfer sounds or images.

3 (d) “Theater owner” means an owner or operator of a motion picture theater.

4 **(2) USE OF RECORDING DEVICE IN MOVIE THEATER.** (a) No person may operate a  
5 recording device in a motion picture theater without written authorization from the  
6 theater owner or the theater owner’s agent.

7 (b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of  
8 a Class A misdemeanor.

9 2. A person who violates par. (a) is guilty of a Class D felony if the violation  
10 occurs after the person has been convicted under this subsection.

11 **(3) DISTRIBUTING COPIES OF UNLAWFULLY RERECORDED MOVIES.** (a) Whoever does  
12 any of the following for commercial advantage or private financial gain may be  
13 penalized as provided in par. (b):

14 1. Advertises, offers for sale or rent, sells, rents or transports a recording of a  
15 movie with knowledge that the sounds or images or both on the recording were  
16 transferred from a recording made in violation of sub. (2).

17 2. Possesses with intent to advertise, offer for sale or rent, sell, rent or transport  
18 a recording of a movie with knowledge that the sounds or images or both on the  
19 recording were transferred from a recording made in violation of sub. (2).

20 (b) 1. Whoever violates par. (a) is guilty of a Class A misdemeanor under any  
21 of the following circumstances:

22 a. If the person creates, advertises, offers for sale or rent, sells, rents,  
23 transports or possesses 10 or fewer recordings in violation of par. (a) during a  
24 180-day period.

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1           b. If the person transfers sounds on or to the Internet in violation of par. (a) and  
2 the transferred sounds are never replayed or are replayed by others from the  
3 Internet 100 or fewer times during a 180-day period.

4           2. Whoever violates par. (a) is guilty of a Class D felony under any of the  
5 following circumstances:

6           a. If the person creates, advertises, offers for sale or rent, sells, rents,  
7 transports or possesses more than 10 but less than 100 recordings in violation of par.  
8 (a) during a 180-day period.

9           b. If the person transfers sounds on or to the Internet in violation of par. (a) and  
10 the transferred sounds are replayed by others from the Internet more than 100 but  
11 less than 1,000 times during a 180-day period.

12           3. Whoever violates par. (a) is guilty of a Class C felony under any of the  
13 following circumstances:

14           a. If the person creates, advertises, offers for sale or rent, sells, rents,  
15 transports or possesses at least 100 recordings in violation of par. (a) during a  
16 180-day period.

17           b. If the person transfers sounds on or to the Internet in violation of par. (a) and  
18 the transferred sounds are replayed by others from the Internet at least 1,000 times  
19 during a 180-day period.

20           c. If the violation occurs after the person has been convicted under this  
21 subsection.

22           (c) Under this subsection, the number of recordings that a person rents shall  
23 be the sum of the number of times in which each individual recording is rented.

24           **(4) DETENTION OF PERSON COMMITTING VIOLATION.** A theater owner, a theater  
25 owner's adult employe or a theater owner's security agent who has reasonable cause

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1 to believe that a person has violated this section in his or her presence may detain  
2 the person in a reasonable manner for a reasonable length of time to deliver the  
3 person to a peace officer or to his or her parent or guardian in the case of a minor.  
4 The detained person must be promptly informed of the purpose for the detention and  
5 be permitted to make phone calls, but he or she shall not be interrogated or searched  
6 against his or her will before the arrival of a peace officer who may conduct a lawful  
7 interrogation of the accused person. The theater owner, the theater owner's adult  
8 employe or the theater owner's security agent may release the detained person  
9 before the arrival of a peace officer or parent or guardian. Any theater owner, theater  
10 owner's adult employe or theater owner's security agent who acts in good faith in any  
11 act authorized under this section is immune from civil or criminal liability for those  
12 acts.

13 **SECTION 11.** 973.075 (1) (e) of the statutes is created to read:

14 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,  
15 offered for sale or rent, sold, rented, transported or possessed in violation of ss.  
16 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for  
17 making a recording or for manufacturing, reproducing, packaging or assembling a  
18 recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49,  
19 regardless of the knowledge or intent of the person from whom the recording or  
20 device is seized. If a device subject to forfeiture under this paragraph is encumbered  
21 by a bona fide perfected security interest that was perfected before the date of the  
22 commission of the current violation and the holder of the security interest neither  
23 had knowledge of nor consented to the commission of that violation, the holder of the  
24 security interest shall be paid from the proceeds of the forfeiture.

25 **SECTION 12.** 973.075 (5) (intro.) of the statutes is amended to read:

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1           973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made  
2 with due provision for the rights of innocent persons under sub. (1) (b) 2m. and (d)  
3 and (e). ~~Any~~ Except as provided in sub. (5m), any property seized but not forfeited  
4 shall be returned to its rightful owner. Any person claiming the right to possession  
5 of property seized may apply for its return to the circuit court for the county in which  
6 the property was seized. The court shall order such notice as it deems adequate to  
7 be given the district attorney and all persons who have or may have an interest in  
8 the property and shall hold a hearing to hear all claims to its true ownership. If the  
9 right to possession is proved to the court's satisfaction, it shall order the property  
10 returned if:

11           **SECTION 13.** 973.075 (5m) of the statutes is created to read:

12           973.075 (5m) (a) In this subsection:

13           1. "Forfeiture action deadline" means the 30th day after the seizure of the  
14 property or, if the property was seized as a result of a criminal conviction, the 30th  
15 day after the date of the conviction.

16           2. "Prosecutor" means the district attorney or, in counties having a population  
17 of 500,000 or more, the district attorney or the corporation counsel.

18           3. "Victim" means the owner, as defined in s. 943.206 (2), of the sounds in a  
19 recording described in sub. (1) (e) or, if the recording is seized in connection with an  
20 investigation or prosecution of a violation of s. 943.208, the performance owner.

21           (b) If a recording involved in a violation of ss. 943.207 to 943.209 is forfeited,  
22 the sheriff of the county in which the recording was seized shall destroy it after the  
23 completion of all proceedings in which the recording might be required as evidence.

24           (c) If, by the forfeiture action deadline, a summons, complaint and affidavit  
25 have not been filed under s. 973.076 (2) (a) with respect to property seized under sub.

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1 (1) (e), the prosecutor shall notify the victim, if known, by certified mail no later than  
2 7 days after the forfeiture action deadline. The prosecutor shall then return the  
3 property to the person from whom it was seized no earlier than 60 days and no later  
4 than 90 days after the forfeiture action deadline unless one of the following applies:

5 1. A court has entered an order prohibiting the return of the property or  
6 requiring it to be conveyed to another person.

7 2. The property is needed as evidence in a criminal proceeding and is likely to  
8 be unavailable for use as evidence if returned to the person from whom it was seized.

9 (END)